

Remarks

In this application, claims 1-46 are pending. In the pending Office Action, Examiner Swiger made a restriction requirement between two identified groups of claims, which were characterized as follows:

Group I: Claims 1-39, drawn to a device, classified in class 606, subclass 61.

Group II: Claims 40-46, drawn to a method, classified in class 606, subclass 77.

The above language concerning the examiner's groups is taken verbatim from the Office Action for the sake of clarity, and is not intended as an admission of any sort by Applicants as to the subject matter or classification of any claim.

As Examiner Swiger's restriction requirement relied on the provisions of 35 U.S.C. § 121, which makes restriction permissive, per standard PTO practice noted in MPEP 803 and 808.02 this application should be examined as a whole if it can be done without undue burden on the examiner. Accordingly, Applicants elect Group I (claims 1-39) for prosecution, with traverse on the grounds that searching and examining the entire application can be made without serious burden. Respectfully, most or all of the searching required for group II will be the same as that for group I. For example, method claims 40-46 include an elongate member, a reinforcing component comprising a biodegradable material, and securing the elongate member. Likewise, apparatus claim 1 recites an elongate member, a reinforcing component composed of a biodegradable material, and securing the elongate member. Searching and consideration of references regarding one set of claims will thus be identical or at least overlap to a very great extent. Put another way, most or all of the references, if any, that are relevant to one set of claims will likely be relevant to the other set of claims. Since the research and analysis effort required for examining one set of claims will be essentially the same as for examining both sets of claims, it is respectfully submitted that there will be no significant extra burden in searching and examining both sets of claims. Per MPEP 803 and 808.02, the restriction requirement should be withdrawn and all pending claims should be examined.

Additionally, Examiner Swiger has not provided reasonable examples that recite material differences between Groups I and II as required by MPEP 806.05(e). No reasoning has been given to support the election requirement other than "the device as claimed could be used to stabilize a femoral fracture" which is conclusory in nature. Per MPEP 803 and 808.01, the restriction requirement should be withdrawn and all pending claims should be examined.

The pending Office Action also made a requirement for election of species. This requirement is also traversed. Examiner Swiger indicated in the opinion that this application includes claims directed to more than one species. Specifically, the following species were identified:

Species directed to a bone fixation device:

Species A1: Figs. 1-2, 11, and 12

Species A2: Figs. 3 and 4

Species A3: Figs. 5 and 6

Species directed to an orthopedic rod:

Species B1: Fig. 7

Species B2: Fig. 8

Species B3: Figs. 9 and 10

The listing above is taken from the Office Action, and is not intended as an admission of any sort by Applicants as to the subject matter of any claim or as to any embodiment disclosed in the application.

Examiner Swiger relied on 35 U.S.C. § 121 in requesting that Applicants elect a single species. The Examiner added his opinion that no claims are generic. Section 121 permits limitation to a "reasonable number" of species. The embodiments shown and described in this application are a reasonable number for consideration, and the election requirement does not suggest otherwise. Further, the similarities among the embodiments are such that they can all be efficiently considered together when the claims are searched and examined. On at least these legal and practical bases, the election requirement should be withdrawn.

Applicants elect Species A1, with traverse. At least claims 1, 39 and 40 are generic to all of the species alleged by the Examiner. All of claims 1-46 are readable on Species A1. Applicants reserve the right to claim genericness of other claims later as may be appropriate. Further, examination of the claims with reference to all of the disclosed embodiments would not be burdensome, and would promote efficiency. Based on the existence of several generic claims and the lack of significant burden, Applicants respectfully request reconsideration of the election requirement.

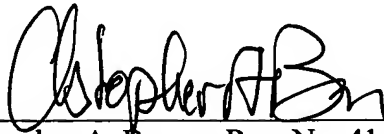
One amendment has been made to the specification, as noted above. This amendment has been made to address an error of a typographical nature, and not to overcome any rejection

of any kind. The amendment does not narrow any claims. Applicants maintain that the claims are entitled to the full scope to which their language entitles them.

In conclusion, Applicants have provisionally elected claims 1-39 of this application, with traverse, in response to the present restriction requirement. Applicants also have provisionally elected Species A1 with traverse. It is respectfully requested that Examiner Swiger reconsider the present restriction and election requirements and withdraw them. An Office Action toward a Notice of Allowance in this case is respectfully solicited.

Respectfully submitted,

By: _____



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